No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

CAMPBELL, CHESTER
Petitioner,

v.

SHELBY, ARTHUR
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM NUMBER 21
Counsel for Petitioner

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QUESTIONS PRESENTED

1. Does dismissal under Heck v. Humphrey of a prisoner's 42 U.S.C. § 1983 civil action constitute a "strike" as defined by 28 U.S.C. § 1915(g) of the Prison Litigation Reform Act (PLRA)?
2. Is the subjective definition of deliberate indifference the appropriate standard for measuring the duty owed to pretrial detainees in a 42 U.S.C. § 1983 failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights?

OPINIONS BELOW

The orders and opinions of the United States District Court for the Western District of Wythe are unreported but reproduced on pages 1–11 of the record. R. at 1–11. The district court first issued an order denying the motion of Respondent Arthur Shelby ("Respondent") to proceed in forma pauperis under 28 U.S.C. § 1915, holding that three prior dismissals pursuant to Heck v. Humphrey constituted "strikes" under the Prison Litigation Reform Act (PLRA). R. at 1. In regard to Respondent's 42 U.S.C. § 1983 claim against Petitioner Officer Chester Campbell ("Petitioner"), the court then held that the subjective standard established in Farmer v. Brennan applied to deliberate indifference failure-to-protect claims—not the objective standard established in Kingsley v. Hendrickson. The court granted Petitioner's motion to dismiss after finding that Respondent failed to meet that standard. R. at 10–11.

The opinion of the United States Court of Appeals for the Fourteenth Circuit is unreported but reproduced on pages 12–20 of the record. R. at 12–20. The court reversed and remanded the denial of the motion to proceed in forma pauperis, holding that the lower court erred in finding that a dismissal pursuant to Heck v. Humphrey constitutes a "strike" under the PLRA. R. at 15. The court also reversed and remanded the motion to dismiss because it found that the objective standard established in Kingsley v. Hendrickson does apply to deliberate indifference failure-to-protect claims, and that Respondent met this standard. R. at 18–19. In a dissenting opinion, Judge Solomons wrote that Kingsley v. Hendrickson did not abrogate the subjective component of deliberate indifference claims, and that, therefore, the subjective standard defined in Farmer v. Brennan should apply. R. at 19–20.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. VIII provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. XIV sect. 1, in relevant part, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C § 1915, in relevant parts, provides:

> (g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.
>
> (h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

28 U.S.C. § 1915A, in relevant part, provides:

> (b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

42 U.S.C § 1983, in relevant part, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an

act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Officer Chester Campbell ("Petitioner") is an entry-level corrections officer at the Marshall jail. R. at 5. As a low-level employee, Officer Campbell is not involved in intelligence assessments nor is he a gang intelligence officer. R. at 5. On January 8, 2021, after having worked at the jail for only a few months, Officer Campbell was put in charge of transferring inmates to and from the jail's recreation room. R. at 6. One of the inmates whom he was tasked with transferring on that day was Arthur Shelby ("Respondent"), a leader of the infamous Geeky Binders criminal gang. R. at 3. During the transfer, Respondent misbehaved, gloating to another inmate about the work of the Geeky Binders and referring to one of the gang's female targets as "scum." R. at 6. Shortly after, Officer Campbell told Respondent to wait at the guard stand while he retrieved three other inmates from two other cell blocks, who happened to be members of the rival Bonucci gang. R. at 6. Upon noticing Respondent, the three inmates immediately ran at and attacked him. Officer Campbell attempted to intervene as soon as the attack began, but he was unable to stop the violence until other officers arrived a few minutes later. R. at 7. As a result of the attack, Respondent suffered serious, life-threatening injuries that required emergency medical attention. R. at 7.

The town of Marshall contains two rival gangs, the Geeky Binders (led by Respondent and his brother) and the Bonuccis. R. at 3. The Geeky Binders are known for their "sophisticated techniques of torturing their enemies using sharp awls that they conceal inside custom-made, engraved ballpoint pens." R. at 2. The authority exercised by the Geeky Binders and the Bonuccis has fluctuated over the last several years, but most recently, the Bonucci gang was known for its considerable power over local officials. R. at 3. As a result, in addition to the

detention of the leader of the Bonucci gang at the Marshall jail, several Marshall police officers and jail officials were charged with accepting bribes from the Bonucci gang, and the jail fired many other officers who it suspected were involved in the gang's illegal activity. R. at 3. The jail replaced these officers with new, uncorrupted officers. R. at 3.

As second-in-command of the Geeky Binders, Respondent has a history of felony convictions for crimes such as drug distribution and possession, assault, and brandishing a firearm. R. at 3. As a result, he has been in and out of prison for the last several years. R. at 3. For this current booking, he was housed in the Marshall jail beginning on December 31, 2020, while awaiting trial on charges of battery, assault, and possession of a firearm by a convicted felon. R. at 3–4. After his arrest, Respondent was booked by Officer Dan Mann, an experienced jail official who recognized Respondent as a member and leader of the Geeky Binders. R. at 4. Officer Mann noted that Respondent had arrived at the Marshall jail boldly in possession of a weapon, the signature deadly awl. R. at 4. He properly recorded the gang affiliation in the jail's online database and cross-checked this affiliation with Respondent's records from previous periods of incarceration in the jail. R. at 4.

Intelligence officers reviewed the database entry and noted that Respondent might be a prime target for the rival Bonuccis because of his leadership position within the Geeky Binders and the recent violent escalation between the two groups. R. at 5. To ensure Respondent's safety, the intelligence officers housed him separately from Bonucci members, placed notices of his presence in administrative areas of the jail, noted his gang status on rosters and floor cards, and announced this information at a meeting with jail officials on January 1, 2021. R. at 5. While Officer Campbell was on the roll call list to attend the intelligence meeting, his time sheets indicate that he was sick on the morning of the meeting and did not arrive until after the meeting

had ended. R. at 5–6. Due to a computer error, there are no records indicating whether Officer Campbell viewed the minutes of the meeting he missed. R. at 6.

One week after this meeting, on January 8, 2021, Officer Campbell oversaw the transfer of inmates for recreation. R. at 6. When Officer Campbell went to retrieve Respondent, Officer Campbell did not know or recognize him. R. at 6. Although he was carrying a list of inmates with special statuses including gang affiliations, Officer Campbell did not reference the list or the online database before removing Respondent from his cell prior to the attack by Bonucci gang members. R. at 6.

Since the incident, Respondent has been found guilty of battery and possession of a firearm by a convicted felon, and was moved to a different facility, Wythe Prison. R. at. 7.

II. PROCEDURAL HISTORY

On February 24, 2022, upon discharge from the hospital for injuries sustained during the incident, Respondent filed this pro se action under 42 U.S.C. § 1983 against Officer Campbell in his individual capacity, alleging that Officer Campbell violated his constitutional rights when he failed to protect him from the attack. R. at 7. Respondent concurrently filed a motion to proceed in forma pauperis to avoid incurring the costs of the suit. R. at 7. On April 20, 2022, the District Court for the Western District of Wythe denied the motion to proceed in forma pauperis, claiming discretion to do so pursuant to 28 U.S.C. § 1915(g) because Respondent had already accrued three "strikes" under that provision. R. at 13. The District Court directed Respondent to pay the $402.00 filing fee before proceeding, and Respondent paid in full. R. at 13. On July 14, 2022, the District Court granted Officer Campbell's motion to dismiss for failure to state a claim. R. at 13.

On July 25, 2022, Respondent filed an appeal of both the denial of his motion to proceed in forma pauperis and the dismissal of his case for failure to state a claim. R. at 13. The United

States Court of Appeals for the Fourteenth Circuit granted him counsel on August 1, 2022. R. at 13. The Fourteenth Circuit reversed and remanded both lower court decisions, regarding the motion to proceed in forma pauperis and the motion to dismiss, in favor of Respondent. R. at 19. Officer Campbell appealed, and the United States Supreme Court granted certiorari. R. at 21.

SUMMARY OF THE ARGUMENT

The Court should resolve the two questions posed in this case by reversing both decisions by the Fourteenth Circuit. First, to preserve the accessibility, efficiency, and effectiveness of the federal judicial system for plaintiffs in need, the Court should find that Respondent's three prior dismissals under Heck v. Humphrey, 512 U.S. 477 (1994), each of which arose from unrelated civil actions based on prior detentions, constitute strikes as defined by the Prison Litigation Reform Act ("PLRA," "the Act"). When a court dismisses an action pursuant to Heck, it necessarily asserts that the underlying complaint was frivolous and failed to state a claim, two of the three possible criteria for a strike according to the PLRA. Further, Respondent's regular presence both in prison and in the courts due to his chronic involvement with the Geeky Binders betrays his abuse of the justice system and supports the finding that his current claim under 42 U.S.C. § 1983 is frivolous and malicious. The determination that these prior dismissals count as strikes would trigger the PLRA's three-strikes provision, barring Respondent's motion to proceed in forma pauperis pursuant to the Act.

Regardless of how the Court rules on the motion to proceed in forma pauperis, Respondent's present 42 U.S.C. § 1983 deliberate indifference claim must be evaluated using a subjective standard as dictated in Farmer v. Brennan, 511 U.S. 825 (1994). Deliberate indifference requires the officer to have knowledge of a substantial and credible risk to the prisoner, and nonetheless choose to disregard that risk. The objective standard used in Kingsley

v. Hendrickson, 576 U.S. 389 (2015), for excessive force claims, however, ignores an evaluation of the officer's intent, making Kingsley incompatible with deliberate indifference claims. Further, even if Kingsley's objective standard were to be used to evaluate deliberate indifference claims, the Fourteenth Amendment's Due Process clause could not provide the basis for the alleged violation. The Fourteenth Amendment only provides protection against acts committed with the intent to punish; negligently inflicted harm is categorically beneath the threshold of intent required for constitutional due process rights to attach. Because any objective standard would reduce the officer's actions to negligence to have a colorable claim, Kingsley cannot eliminate the requirement for a pre-trial detainee alleging violations of Fourteenth Amendment rights to prove the officer's subjective intent, and therefore should not be used in evaluating any deliberate indifference failure-to-protect claim.

ARGUMENT

"While denial of an [in forma pauperis] motion is generally reviewed for abuse of discretion, whether a prior dismissal constitutes a strike is a legal question." Prescott v. UTMB Galveston Tex., 73 F.4th 315, 318 (5th Cir. 2023). The Court reviews questions of law de novo. AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 350 (2011). The Court also accepts all well-pleaded facts as true and views them in the light most favorable to the plaintiff (here, Respondent). Whitley v. Hanna, 726 F.3d 631, 637 (5th Cir. 2013). Though the Fourteenth Circuit reversed the District Court for the District of Wythe in favor of Respondent on both questions, this Court should reverse in favor of Officer Campbell after finding that (a) Respondent's three prior dismissals under Heck v. Humphrey, 512 U.S. 477 (1994), constitute strikes under the Prison Litigation Reform Act ("PLRA"), preventing him from proceeding in forma pauperis, and (b) if the claim is allowed to proceed, the allegation of deliberate

indifference failure-to-protect should be judged using the subjective standard used in Farmer v. Brennan, 511 U.S. 825, 829 (1994), rather than the objective standard used for excessive force claims in Kingsley v. Hendrickson, 576 U.S. 389 (2015), for excessive force claims.

I. RESPONDENT IS BARRED FROM PROCEEDING IN FORMA PAUPERIS BECAUSE HIS THREE PRIOR DISMISSALS UNDER HECK V. HUMPHREY CONSTITUTE STRIKES ACCORDING TO THE PLRA.

In passing 28 U.S.C. § 1915, Congress provided an avenue for indigent litigants to file claims in forma pauperis, a privilege that absolves individual pro se litigants of the need to prepay federal filing fees. In forma pauperis ensures that under-resourced plaintiffs "have meaningful access to the federal courts" and are not financially barred from asserting their vital civil rights. Abdul-Akbar v. Dep't of Corrs., 910 F. Supp. 986, 998 (D. Del. 1995), aff'd 111 F.3d 125 (3d Cir. 1997). However, as a testament to its value and effectiveness, over time the in forma pauperis privilege became severely overused. 141 CONG. REC. S14626 (daily ed. Sept. 29, 1995) (statement of Sen. Dole) (stating, for example, that over the last four decades of the twentieth century, the volume of in forma pauperis claims brought by those in prison rose nearly 600%, to almost forty thousand claims per year). Many of these claims were "unquestionably meritless," Stephen M. Feldman, Indigents in the Federal Courts: The In Forma Pauperis Statute – Equality and Frivolity, 141 FORDHAM L. REV. 413, 414–15 (1985). See also 141 CONG. REC. S14626 (daily ed. Sept. 29, 1995) (statement of Sen. Dole) (listing meritless suits brought in forma pauperis, such as one launched on the grounds that a state prisoner received creamy peanut butter rather than chunky, as had been requested, and another seeking redress for an undesirable haircut).

In response, Congress passed the Prison Litigation Reform Act ("PLRA") to incentivize responsible use of the civil justice system and free it from frivolous suits that "tie up the courts,

waste valuable legal resources, and affect the quality of justice enjoyed" by those with more legitimate claims. Id. The PLRA's three-strikes provision states that a prisoner may be denied in forma pauperis status if they have "on 3 or more occasions, while incarcerated or detained in any facility, brought an action . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Under the PLRA, a "prisoner" is defined as "any person incarcerated or detained" for violating criminal law. 28 U.S.C. § 1915(h).

Respondent falls under the purview of the PLRA's three-strikes provision and therefore must satisfy its conditions in order to claim in forma pauperis status. He is a prisoner according to the PLRA's definition, as he is incarcerated for and accused of violating the criminal prohibition on firearm possession by convicted felons, a classification applicable to him based on prior convictions for crimes such as drug distribution and possession, assault, and brandishing a firearm. R. at 3–4. During prior detentions, Respondent had three separate civil actions brought under 42 U.S.C. § 1983 each dismissed without prejudice pursuant to Heck v. Humphrey, 512 U.S. 477 (1994), because they would have called into question either his conviction or his sentence. R. at 3. Because a Heck dismissal satisfies the PLRA criteria for a strike, Respondents three dismissals trigger the three-strikes provision. Given that Respondent fails to meet the provision's exception, which allows a prisoner who has attained three strikes to proceed in forma pauperis if they are "under imminent danger of serious physical injury," 28 U.S.C. § 1915(g), the Court should deny his motion to file his § 1983 action in forma pauperis. Doing so will uphold the purpose of the PLRA by clearing the federal civil court system of cases brought by those, like Respondent, who seek to abuse it, thereby leaving the system open to indigent litigants who truly need it.

A. The Dismissals of Three of Respondent's Prior § 1983 Actions Satisfy the PLRA Definition of "Strike" for Being Legally Frivolous and Failing to State a Claim.

Respondent has had three prior actions dismissed pursuant to Heck. R. at 3. Though Heck does not directly address the PLRA, courts have interpreted the central justification for a Heck dismissal—that the claim is premature and therefore beyond the ability of the court to address—to merit satisfaction of the criteria for a strike laid out in the PLRA. 28 U.S.C. § 1915(g). This Court should therefore find that Respondent's prior Heck dismissals count as strikes for the purposes of the PLRA.

i. Heck v. Humphrey States that Civil Actions Brought Prior to Favorable Termination Should Be Dismissed Because They Are Premature.

Heck v. Humphrey states that any § 1983 action brought before a plaintiff has proven favorable termination is premature and must be thrown out because the court cannot presently recognize a valid cause of action. 512 U.S. at 489–90. In Heck, the United States Supreme Court held that in order to avoid civil actions that undermine or call into question standing criminal convictions, "[a] claim for damages bearing that relationship to a conviction or sentence that has *not* been invalidated is not cognizable under § 1983." Id. at 487. Therefore, for a plaintiff to recover damages for an allegedly unconstitutional conviction or imprisonment, they "must prove that the conviction or sentence has been (a) reversed on direct appeal, (b) expunged by executive order, (c) declared invalid by a state tribunal authorized to make such determination, or (d) called into question by a federal court's issuance of a writ of habeas corpus." Id. at 486–87. This is known as the "favorable termination" rule. According to this rule, when a state prisoner brings a claim under § 1983, the district court must "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence" and, if it would, dismiss the case without prejudice. Id. at 487. As the lower court recognized, a Heck dismissal simply

indicates the "prematurity" of an action, R. at 15, providing notice to the plaintiff that while they might return with the same § 1983 claim later, they must first achieve favorable termination of the underlying conviction or sentence. See Heck, 512 U.S. at 489 (holding that a prisoner "has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus").

Though this context is crucial for determining whether Respondent's motion to proceed in forma pauperis is barred by the PLRA, it is not up for dispute that prior to the action at hand, Respondent sustained three dismissals under Heck. R. at 3. These dismissals were based on determinations that each of Respondent's claims, if resolved in his favor, would have called into question either his conviction or his sentence. R. at 3. The record lacks details about the basis for these claims and the specific relief sought by Respondent. However, it *does* contain sufficient evidence to see that, during his prior detention, Respondent demonstrated a habit of prematurely filing § 1983 actions against a wide array of defendants: prison officials, state officials, and the United States. R. at 3. On each of at least three occasions, a court told Respondent that his action was premature and, consequently, an inappropriate use of the court's resources.

ii. The Prematurity of a Dismissal Under Heck v. Humphrey Indicates That the Underlying Action Is Legally Frivolous and Fail to State a Claim.

Courts recognize that Heck dismissals qualify as strikes under the PLRA's definition. A determination on whether a dismissal constitutes a strike "hinges exclusively on the basis for the dismissal." Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1274 (2020). The bases provided by the PLRA are that an action should be dismissed because it either (a) is frivolous, (b) is malicious, or (c) "fails to state a claim upon which relief can be granted." 28 U.S.C. § 1915(g). First, a "frivolous" claim is one that "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Second, a "malicious" claim is one that is "abusive of the

judicial process." Ballentine v. Crawford, 563 F. Supp. 627, 628–29 (N.D. Ind. 1983). "A plaintiff's past litigious conduct should inform" any determination of whether a claim is frivolous or malicious. Cochran v. Morris, 73 F.3d 1310, 1316 (4th Cir. 1996). For example, "[w]hen a pro se litigant files complaints that are repetitive, duplicative of other filings, [or] without merit…he abuses the district court process." Childs v. Miller, 713 F.3d 1262, 1265 (10th Cir. 2013). In this way, "[a]lthough the [dismissing] court may not have uttered the words 'frivolous' or 'malicious,' dismissal for abuse of the judicial process is precisely the type of strike that Congress envisioned when drafting section 1915(g)." Rivera v. Allin, 144 F.3d 719, 731 (11th Cir. 1998).

Finally, the third criterion's "fails to state a claim" language mirrors that of Rule 12(b)(6) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12. This criterion's "broad language covers *all* such dismissals," regardless of whether the dismissal was with or without prejudice. Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1274 (2020) (emphasis added). See also Matthews v. F.B.I., 251 F. Supp. 3d 257, 262 (D.D.C. 2017) (rejecting the argument that a strike is foreclosed when the dismissal is without prejudice, and stating that "there is no question" that a dismissal under Heck constitutes a strike). A dismissal on any of the above grounds does not materialize into a strike until the plaintiff "has exhausted or waived his rights to appeal." Orr v. Clements, 688 F.3d 463, 464 n.1 (8th Cir. 2012).

The Fifth, Seventh, Tenth, and District of Columbia Circuits agree that Heck dismissals are either legally frivolous or indicative of a failure to state a claim. "[T]he dismissal of a civil rights suit for damages based on prematurity under Heck is for failure to state a claim." Smith v. Veterans Admin, 636 F.3d 1306, 1312 (10th Cir. 2011). In Smith, the Tenth Circuit interpreted Heck to *require* proof of favorable termination as an "*essential element* of a prisoner's civil

claim" under § 1983. Id. A dismissal under Heck can thus only materialize after a "failure to allege this essential element," which is fundamentally a failure to state a claim with basis sufficient to grant relief. Id. ("[Plaintiff's] failure to allege this essential element of his § 1983 claim . . . was a failure to state a claim."). Some courts have also deemed Heck dismissals to be "legally frivolous," Hamilton v. Lyons, 74 F.3d 99, 102 (5th Cir. 1996), satisfying another of the PLRA strike criteria. See also McCurdy v. Sheriff of Madison Cnty., 128 F.3d 1144, 1145 (7th Cir. 1997) (deeming a dismissal pursuant to Heck to be "sanctionably frivolous"); Hazel v. Reno, 20 F. Supp. 2d 21, 24 (D.D.C. 1998) ("Where, as here, a Complaint is barred by Heck, it is appropriate—if not mandatory—for the district court to dismiss the action . . . 'because the plaintiff's action has been shown to be legally frivolous.'") (quoting Williams v. Hill, 878 F. Supp. 269, 271 (D.D.C. 1995)); Alston v. F.B.I., 747 F. Supp. 2d 28, 32 (D.D.C. 2010) (holding an action to be frivolous "where the appellant did not conform to the requirements mandated by Heck"). In other words, because a Heck-barred claim, at the time it is brought, is too premature for the court to address, a Heck-barred claim is both frivolous and fails to state a claim upon which the court may grant relief. In fact, in Davis v. Kansas Department of Corrections, the Tenth Circuit counted *two* strikes against a plaintiff who appealed a Heck dismissal, counting one strike for the initial dismissal and another for the appeal. 507 F.3d 1246, 1249 (10th Cir. 2007).

Following the above logic, Respondent's three Heck dismissals suggest three separate actions that were each legally frivolous and failed to state a claim. Though the record does not specify the rationale behind the dismissals, the Court can necessarily infer from their existence that Respondent, on three separate occasions, failed to prove favorable termination, an essential element of a § 1983 action for damages. The record provides no evidence to the contrary. An

action that fails to prove favorable termination is frivolous and fails to state a claim. Therefore, the Court can conclude that the central criterion for the PLRA definition of a strike has been met by each of Respondent's Heck dismissals. Furthermore, because determinations of frivolousness or maliciousness take into account a plaintiff's "past litigious conduct," Cochran, 73 F.3d at 1316, the Court should also consider the frequency with which Respondent has had his claims dismissed: his initiation of multiple dismissible claims over the past several years indicates a lack of appreciation and respect for the limited resources of the court, which the Court can perceive as abusive. See Abdul-Akbar v. Dep't of Corrs., 910 F. Supp. at 998 (where plaintiff, by filing repeated civil actions before the court, all in forma pauperis, demonstrated a "history of repetitious and frivolous filings indicat[ing] a clear attempt to abuse the courts and the benefits of in forma pauperis status"). Given that the central criterion for a strike has been met, and we have no evidence that any of the previous Heck dismissals are pending appeal by the Respondent, the Court should treat each dismissal as a strike.

iii. Heck Dismissals Constitute a Strike Even Under a Narrower Interpretation of the PLRA Definition.

The Ninth Circuit has taken a different approach, erroneously adopting a narrower interpretation of the PLRA criteria for finding a strike. No other circuits have consistently followed it down this path. First, it has held that dismissals under Heck are not categorically frivolous, as "plaintiffs may have meritorious claims that" just have not yet accrued. Washington v. L.A. Cnty. Sheriff's Dep't, 833 F.3d 1048, 1055 (9th Cir. 2016). It also more narrowly defines "malicious" as a complaint that "was 'filed with the intention or desire to harm another.'" Id. (quoting Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005)). The stricter definition of "malicious" has no bearing on this case, as Respondent's prior dismissals are strikes on the grounds of the other two criteria: frivolousness and failure to state a claim. And while it is true

that Respondent's claims *might* become meritorious upon accrual, Respondent has offered no evidence to demonstrate that. Additionally, just because something has potential to gain value in the future does not mean that it is not frivolous *now*; it does not change the fact that repeatedly bringing the claim prior to accrual repeatedly places a burden on the judicial system. Heck is long-settled precedent, and plaintiffs should bring claims that adhere to its requirements.

Even if the Court agrees with the Ninth Circuit's approach towards defining the first two PLRA criteria of a strike, in the same decision the Ninth Circuit acknowledged that Heck dismissals for failure to state a claim "may constitute strikes within the meaning of the PLRA . . . when the pleadings present an 'obvious bar to securing relief' under Heck." Washington, 833 F.3d at 1055 (quoting ASARCO, LLC v. Union Pac. R.R., 765 F.3d 999, 1004 (9th Cir. 2014)). This necessarily becomes a fact-specific inquiry dependent upon each complaint that led to a Heck dismissal—an inquiry the Court cannot at present time conduct, given the sparse record pertaining to these prior actions. See ASARCO, 765 F.3d at 1004 (stating that evaluating a dismissal requires assessing whether it is clear on the face of the complaint "that there is some insuperable bar to securing relief"). In the context of Heck, it would have to be obvious from the face of the complaint that Respondent had not received favorable termination. See, e.g., Ray v. Lara, 31 F.4th 692, 698 (9th Cir. 2022) (examining whether the plaintiff's complaint explicitly mentioned the status of his current conviction, in which case it would be obvious that he had not achieved favorable termination and thus that the claim was Heck-barred). Again, given the facts presented (or not presented) in the record, we cannot make that determination in this case at this time, even when viewing the facts in the light most favorable to Respondent. The Ninth Circuit approach is thus more resource intensive and harder to apply, contradicting the PLRA's goal to ease the burdens of the federal judicial system.

B. Respondent Fails to Satisfy the "Immediate Danger" Exception Granted by the Three-Strikes Provision of the PLRA.

With the PLRA criteria for a strike satisfied, we next turn to the "imminent danger" exception provided by the three-strikes provision, which exempts any prisoner "under imminent danger of serious physical injury" from the bar on proceeding in forma pauperis. 28 U.S.C. § 1915(g). When assessing whether a plaintiff with three strikes qualifies for the "imminent danger" exception, the Court looks at the danger as it existed at the time the complaint or notice of appeal was filed. Choyce v. Dominguez, 160 F.3d 1068, 1070 (5th Cir. 1998). Circuits have reached broad agreement on this matter. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001) (citing a desire to bring the Third Circuit into alignment with the Fifth, Eighth, and Eleventh Circuits as the justification for overruling its past determination that the danger should be assessed at the time of the incident that forms the basis of the request for in forma pauperis status).

The "imminent danger" analysis "turns on the meaning of three words: 'serious physical injury.'" Gresham v. Medden, 938 F.3d 847, 849 (6th Cir. 2019). Two of the words—"physical" and "injury"—"seem to have a straightforward meaning in this context," a meaning which forecloses purely psychological damage. Id. The meaning of "serious," however, is "less straightforward" and requires looking at the context of the request for exemption. Id. A plaintiff seeking coverage by the exception must assert "potentially dangerous consequences such as death or severe bodily harm. Minor harms or fleeting discomfort don't count." Id. at 850 (deciding that "temporary and rarely life threatening" conditions such as chest pain, vomiting, and stomach cramps do not warrant application of the exception). See also Prescott, 73 F.4th 315 (declining to extend the exception to a plaintiff concerned about food contamination). In order for the "imminent danger" exception to apply, the provision "requires a relationship between the

imminent danger alleged in the [in forma pauperis] application and the facts alleged and relief sought in the underlying claim." Meyers v. Comm'r of Soc. Sec. Admin., 801 Fed. App'x. 90, 95 (4th Cir. 2020). Harm sustained from "a single past incident" does not warrant application of the exception, as it "does not suggest a threat of future harm." Ball v. Famiglio, 726 F.3d 448, 468 (3d Cir. 2013) (citing Abdul-Akbar v. McKelvie, 239F.3d at 315 n.1 (concluding that a single incident does not establish "an ongoing danger")). Instead, imminent danger requires "receiving constant, daily threats of irreparable harm, injury or death," Williams v. Paramo, 775 F.3d 1182, 1190 (9th Cir. 2015), or multiple threatening and physical incidents. Chavis v. Chappius, 618 F.3d 162, 170 (2d Cir. 2010).

Most pertinent to Respondent's motion, courts have declined to apply the "imminent danger" exception even when the plaintiff alleged concerns that others being held in the same correctional facilities had reason to want to hurt them. See, e.g., Cloud v. Stotts, 455 Fed. App'x. 534, 535 (5th Cir. 2011) (plaintiff failed to "provide any details of the [alleged] confrontation with or threats made by another inmate" that formed the basis of his claim that he was in imminent danger); Welch v. Galie, 207 F.3d 130, 132 (2d Cir. 2000) (finding plaintiff's claim of imminent danger at the hands of corrections officials "meritless"); Merriweather v. Reynolds, 586 F. Supp. 2d 548, 552 (D.S.C. 2008) (basing the decision not to exempt the plaintiff from the three-strikes provision on the plaintiff's failure to provide "substantial supporting allegations" to his claim that others in his prison sought to harm him). This is particularly true when a prisoner who experienced violence at the hands of others has been moved to a new facility and is no longer living amongst those who caused them harm. See Asemani v. U.S. Citizenship & Immigr. Servs., 797 F.3d 1069, 1076 (D.C. Cir. 2015) (holding that prior violence in a different facility

does "not indicate that" one seeking exemption "continued to face imminent danger" after being moved, nor does having "inmate enemies").

Respondent is not currently in imminent danger of serious physical injury. Though he certainly suffered greatly at the hands of the Bonucci clan inmates, he has since been moved from the Marshall jail to Wythe Prison, an entirely different facility. R. at 7. The record indicates one single incident of harm and asserts no reason to believe that he is in danger of falling victim to another violent incident at the hands of any gang members at his new facility. Given the extensive briefing that was done at the Marshall jail upon his arrival, R. at 5, it is also reasonable to believe that the Wythe Prison staff will be briefed and will adopt security procedures to keep Respondent safe. Any psychological fear that Respondent has about possible attacks is insufficient to satisfy the exception, as stated in Gresham. 938 F.3d at 849 (indicating that psychological harm is not enough to qualify for the exception, given the PLRA's textual specification of "physical" harm).

C. Permitting Respondent to Proceed in Forma Pauperis Would Defy the Purpose of the PLRA.

Ultimately, "[p]auper status is a privilege, not a right." Gresham, 938 F.3d at 851. The PLRA was passed to strengthen, for those in need, the privilege of seeking out legal proceedings without incurring their costs. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 (1948) (stating that in forma pauperis ensures that nobody must "contribute the payment of costs, the last dollar they have or can get, and thus make themselves and their dependents wholly destitute" in order to reap the benefits of the judicial system). The goal of in forma pauperis is "to provide an entré[e], not a barrier, to the indigent seeking relief in federal court." Souder v. McGuire, 516 F.2d 820, 823 (3d Cir. 1975).

However, in providing an avenue for in forma pauperis in federal courts, Congress was also concerned "with the possibility that this privilege might be abused." Xanthull v. Beto, 296 F. Supp. 129, 131 (S.D. Tex. 1969). The three-strikes provision of the PLRA was passed in the 1990s to prevent "so-called 'frequent filer'" plaintiffs from overextending the federal judiciary system and its resources. White v. State of Colo., 157 F.3d 1226, 1232 (10th Cir. 1998). It both provides a financial disincentive from filing meritless claims and clears up the docket of the federal judiciary so that it may more effectively and energetically devote its time, attention, and resources to meritorious claims. See Feldman, 141 FORDHAM L. REV. at 420 (detailing the policy reasons for regulating access to in forma pauperis status). Respondent has decided, through filing numerous claims that have been dismissed as, at best, legally frivolous, to forfeit his ability to benefit from the PLRA. With this in mind, the Court should honor the purpose of the PLRA and reverse the Fourteenth Circuit's decision in favor of Petitioner, thereby saving the judiciary's time and resources for prisoners and indigent plaintiffs who actually need them.

II. THE SUBJECTIVE DEFINITION OF DELIBERATE INDIFFERENCE IS THE APPROPRIATE STANDARD FOR MEASURING THE DUTY OWED TO PRETRIAL DETAINEES UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The District Court properly held that an officer must have subjective, actual knowledge of a risk to an inmate's safety to be held liable in a deliberate indifference failure-to-protect claim, regardless of whether the plaintiff is a pretrial or post-conviction detainee. R. at 8. The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects against the deprivation of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV. This right extends to all Americans, including pretrial detainees, who may not be "punished prior to an adjudication of guilt." Bell v. Wolfish, 441 U.S. 520, 535–36 (1979). These claims to "life, liberty, or property," are not, however, unlimited. The mechanism for resolving violations

of "liberty" or confinement occurs through the adjudication of one's guilt in accordance with due process of law. Bell, 441 U.S. at 535–36. Thus, civil claims brought by pretrial detainees under 42 U.S.C. § 1983 for a violation of Fourteenth Amendment Due Process rights are mostly limited to unconstitutional conditions of confinement, including unconstitutional punishment. Id. at 537. This can include, but is not limited to, the use of excessive force by prison officers, deliberate indifference to inmate health or safety, and as is at issue in this case, a failure to protect inmates from harm.

Jail officials are not allowed to violate inmate's constitutional rights regardless of detainment status; however, they are allowed to engage in necessary policies and practices to preserve "internal order and discipline" that may require "limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." Id. at 546 ("Even when an institutional restriction infringes a specific constitutional guarantee . . . the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security."). As a result, the Fourteenth Amendment cannot be invoked just because the potentially negligent actor is a state official or has an association with the state; rather, there must be a clear violation not justified by the needs of institutional security or some other legitimate government interest. Cnty. of Sacramento v. Lewis, 523 U.S. 833, 848 (1998) ("[T]he due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm."). Thus, whether a pretrial detainee can bring a claim that his or her Due Process Clause rights were violated depends on the nature of the violation and the evaluative standard associated with that violation.

The Court's decision in Farmer v. Brennan, which held that the subjective standard applies to claims of deliberate indifference, should apply here even though the plaintiff in Farmer

was a post-conviction detainee. 511 U.S. 825, 829 (1994) ("This case requires us to define the term 'deliberate indifference,' as we do by requiring a showing that the official was *subjectively aware* of the risk." (emphasis added)). By contrast, the Court's decision in Kingsley v. Hendrickson, 576 U.S. 389 (2015), does not eliminate the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim brought under 42 U.S.C. § 1983 for a violation of Due Process, even though the plaintiff in Kingsley was a pre-trial detainee. Id. at 391. In the Kingsley context, which involved an excessive force claim, the court held that a pretrial detainee must show that the defendant's actions against the pretrial detainee were "objectively unreasonable," meaning that the plaintiff need not prove the defendant's state of mind. Id. at 395-96. By contrast, the subjective standard requires the plaintiff to prove that the defendant, the prison official, was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837. In other words, the plaintiff bears the burden to prove that the defendant was "subjectively aware of the substantial risk of serious harm" to have had a "sufficiently culpable state of mind." Carter v. Galloway, 352 F.3d 1346, 1349 (11th Cir. 2003).

Because the Respondent claims that Officer Campbell failed to protect him, which is a subset of deliberate indifference claims, the subjective standard as dictated by Farmer should apply. Therefore, Respondent must prove that Officer Campbell had subjective, actual knowledge that there was a credible threat to Respondent's safety and the sufficiently culpable state of mind required to disregard that threat.

A. Farmer's Subjective Standard for Deliberate Indifference Claims Applies to Pretrial Detainees.

Farmer's subjective standard states that a prison official may be held liable in a deliberate indifference claim for "denying humane conditions of confinement" only if the official "knows

that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer, 511 U.S. at 847. This standard did not come about as a consequence of resolving another issue. Rather, the Court was intentional in holding that the subjective standard should apply to deliberate indifference claims; indeed, the ruling was made in response to a lower court circuit split on this very issue. Id. at 832 (resolving inconsistent tests for deliberate indifference between the Third and Seventh Circuits, and ultimately siding with the Seventh Circuit's application of a subjective standard).

Even though the plaintiff in Farmer was a post-conviction detainee, which therefore rooted the deliberate indifference violation as a constitutional claim in the Eighth Amendment, the subjective standard should still apply to pretrial detainees. Claims brought by pretrial detainees are evaluated under the Fourteenth Amendment because Eighth Amendment protections only attach post-conviction after a "formal adjudication of guilt in accordance with due process of law." Bell, 441 U.S. at 599 n.16. The Eighth Amendment, which prohibits cruel and unusual punishment, does not apply to pretrial detainees because under the Fourteenth Amendment's Due Process Clause, pretrial detainees may not be punished "in any manner," neither "cruelly and unusually nor otherwise." Id. at 535. However, although the Eighth Amendment protection doesn't formally apply because their guilt has not yet been adjudicated, pretrial detainees are still protected by the general prohibition on cruel and unusual punishment that the Eighth Amendment covers, just through the text of the Fourteenth Amendment's Due Process Clause. City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983) ("The due process rights of a person [who is a pretrial detainee] . . . are at least as great as the Eighth Amendment protections available to a convicted prisoner.").

Because the Fourteenth Amendment prohibits any punishment of pretrial detainees, it should extend logically that the same subjective standard used to evaluate deliberate indifference under the Eighth Amendment would apply to pretrial detainees. See Nam Dang ex rel Vina Dang v. Sheriff, Seminole Cnty. Fl., 871 F.3d 1272, 1283 n. 2 (11th Cir. 2017) (applying the same subjective standard used in a deliberate indifference claim brought under the Eighth Amendment to evaluate a pretrial detainee's claim brought under the Fourteenth Amendment); see also Whitney v. City of St. Louis, 887 F.3d 857, 860 (8th Cir. 2018) (extending the Fourteenth Amendment's protection of pretrial detainees to include Eighth Amendment prohibitions of jail officials acting with deliberate indifference towards risks of suicide). Ultimately, the standards and results of both amendments are the same: to protect detainees from unnecessary and egregious punishment. Goebert v. Lee Cnty., 510 F.3d 1325, 1326 (11th Cir. 2007).

Although Respondent was a pretrial detainee on January 8, 2021, conviction status should not change the foundational components of a deliberate indifference claim and its subjective evaluation. Therefore, the subjective standard addressed in Farmer for this very type of claim should apply. See Hare v. City of Corinth, Miss., 74 F.3d 633, 649 (5th Cir. 1996) ("The fact of conviction ought not make one more amenable under the Constitution to unnecessary random violence or suffering, or to a greater denial of basic human needs.").

B. Deliberate Indifference Claims Contain an Inherent Subjective Component.

Excessive force and deliberate indifference claims are separate and discrete issues distinguished by the subjective element of intentionality in each claim. A pretrial detainee's excessive force claim protects a pretrial detainee from the affirmative "use of excessive force that amounts to punishment." Kingsley, 576 U.S. at 397. A pretrial detainee's deliberate indifference claim has nothing to do with affirmative acts meant to punish, but is instead more likely to relate

to inaction, whether that be in a medical context or a failure-to-protect. Daniels v. Williams, 474 U.S. 327, 332 (1986) ("Far from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person."). In a deliberate indifference claim, a plaintiff can *only* prevail if they can prove that the official failed to take a certain action and knew about this failure. Farmer, 511 U.S. at 835. Therefore, officials who lack knowledge about a specific risk in deliberate indifference claims cannot have inflicted punishment. Id. at 838, 844 ("[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for condemnation, cannot under our cases be condemned as the infliction of punishment."). By contrast, excessive force is considered punishment by default, and therefore the plaintiff need not show that the official intended for his force to be excessive nor that he interpreted the force as excessive, just that the force can be objectively considered excessive. Kingsley, 576 U.S. at 396.

While excessive force claims require an objective consideration of whether the action was "excessive," deliberate indifference requires an element of intentionality that can only be evaluated through the state of mind of the officer as well as the individualized facts and circumstances of the instant case before the Court. Cnty. of Sacramento, 523 U.S. at 850 (finding that the rules of due process cannot be mechanically applied because "[d]eliberate indifference that shocks in one environment may not be so patently egregious in another"). This requirement, which the Court specifies applies explicitly to claims of deliberate indifference, is directly at odds with Kingsley's objective standard, which, instead of engaging in an individualized review of the circumstances that lead to a claim, only considers if the action itself is objectively unreasonable. Kingsley, 576 U.S. at 396. Contra Cnty. of Sacramento, 523 U.S. at 850 ("[O]ur concern with preserving the constitutional proportions of substantive due process demands an

exact analysis of circumstances before any abuse of power is condemned as conscience shocking." (emphasis added)).

i. Deliberate Indifference Requires a Showing of More Than Negligence.

It is not enough for Respondent to prove that a harm occurred or that Officer Shelby was negligent. Instead, to prevail on his claim of deliberate indifference, Respondent must establish a "state of mind more blameworthy than negligence." Farmer, 511 U.S. at 835. Negligent conduct is an act "or an omission to act when there is a duty to do so," which notably excludes an element of intent. Restatement (Second) of Torts § 282(a) (1965). However, Merriam-Webster defines "deliberate" as "characterized by or resulting from careful and thorough consideration," thereby distinguishing the definition of negligence from that of deliberate indifference. Because intent is required to justify liability under § 1983, negligently failing to protect an inmate from attack does not meet the standard for a successful claim of deliberate indifference. Brown v. Hughes, 894 F.2d 1533 (11th Cir. 1990); see also Castro v. Cnty. of L.A., 833 F.3d 1060, 1085 (9th Cir. 2016) (Ikuta, J., dissenting) (arguing that one cannot inflict punishment by way of accident, which would amount, at most, to negligence).

Leal v. Wiles, 734 F. App'x 905 (5th Cir. 2018), a case with similar facts to the case at hand, is instructive on how courts have distinguished negligence from the evaluative standard necessary for successful deliberate indifference claims filed by pretrial detainees. In Leal, a pretrial detainee filed a § 1983 action alleging that prison officials failed to protect him from an attack by rival gang members. After arriving at the jail, officers were notified that Leal should be separated from members of a rival gang who had placed a hit on him. Leal, 734 F. App'x at 906. As a result, his roster, floor card, and database entry were updated to reflect this information. Unfortunately, as was the case with Respondent, when taking Leal out of his cell for his

recreation time, he encountered members of the rival gang and was assaulted. Id. In a *per curiam* opinion mirroring the language used by the Supreme Court in Farmer, the Fifth Circuit held that while prison officials have a duty to protect prisoners from harm, not every act of violence between prisoners invokes constitutional liability. Id. at 909. Rather, constitutional liability is only invoked when the prison official has a "sufficiently culpable state of mind," "knows of and disregards an excessive risk to inmate safety" and, ultimately, is "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must draw that inference." Id. at 909–910 (quoting Farmer, 511 U.S. at 837). By inserting an element of knowledge, this standard requires a showing of substantially more than that of negligence or even gross negligence.

Applying Kingsley's objective standard to deliberate indifference failure-to-protect claims filed by pretrial detainees would therefore improperly lower the liability standard to one akin to the negligence standard. The Kingsley objective standard would reduce most deliberate indifference claims to a two-prong test consisting of (1) a showing that the conditions objectively deprived the prisoner of the right to due process; and (2) that the officer acted at minimum with indifference to the risk. Darnell v. Pineiro, 849 F.3d 17, 29 (2d Cir. 2017). However, the Kingsley standard, written for an excessive force claim, erases the nuance that the Court warned was necessary when evaluating claims of deliberate indifference in County of Sacramento and flattens the very definition of "deliberate." Cnty. of Sacramento, 523 U.S. at 850. Merriam-Webster's "careful and thorough consideration" implies intentionality and premeditation in one's actions, not a generalized "omission to act" as defined by negligence. Strain v. Regalado, 977 F.3d 984, 992 (10th Cir. 2020); see also Paul v. Davis, 424 U.S. 693, 701 (1976) (warning

that the Fourteenth Amendment's Due Process Clause is not a "font of tort law to be superimposed upon whatever systems may already be administered by the States.").

Not only is there no evidence that Officer Campbell knew of the risk of the rival gang to Respondent, but there is also no evidence that he was able to draw an inference that a serious risk of harm existed and chose to disregard that risk. Even if he had been aware of Respondent's gang affiliation and the tensions with the rival gang, the likelihood of a fight must have risen above a "mere possibility" before Officer Campbell's actions or lack thereof could constitute deliberate indifference. Brown, 894 F.2d at 1537. In the absence of evidence of intent or knowledge on behalf of Officer Campbell, Respondent's argument is reduced to one akin to negligence, which does not rise to the level of § 1983 liability.

ii. Even If The Court Applies Kingsley's Objective Standard, the Fourteenth Amendment Due Process Clause Does Not Protect Against Acts of Negligence, Thereby Excluding The Deliberate Indifference Failure-to-Protect Claim.

The Fourteenth Amendment's Due Process Clause, which provides the constitutional basis for 42 U.S.C. § 1983 claims brought by pretrial detainees, is only implicated by acts committed with the intent to punish. Cnty. of Sacramento, 523 U.S. at 849 ("[L]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process."). By extension, the Fourteenth Amendment does not provide protection against acts akin to negligence associated with an objective standard, which definitionally were not committed with any intent, let alone an intent to punish. See Daniels, 474 U.S. at 328 (holding that the Fourteenth Amendment's Due Process Clause is "simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property.").

Invoking the Fourteenth Amendment to redress acts of negligence would open the courts to a flood of claims by pretrial detainees eager for the improvement of conditions that, while

below the standard one might choose for oneself outside of detention, does not amount to a colorable claim under the United States Constitution. The Court affirmed this notion in Daniels, in which a corrections officer negligently left a pillow on the stairs of the prison, causing the petitioner, a prisoner, to slip and fall. Id. at 328. The prisoner sued the officer, claiming that the officer's negligence deprived him of his "liberty" interest to be free from bodily injury without due process of law within the meaning of the Fourteenth Amendment. Id. In response, the Supreme Court held that the Due Process Clause is not triggered by any act of negligence, and by extension, any lack of due care, exercised by a prison official merely because the victim happens to be a prisoner. Id. at 333. Cf. Estelle v. Gamble, 429 U.S. 97, 106 (1976) ("Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.").

Nothing in the record indicates that Officer Campbell knew about Respondent's gang affiliation, nor did he know about the potential for attack. R. at 10. He was, as the district court rightly concluded, "at most . . . negligent." R. at 11. Even if Respondent believes he has a statutory claim of negligence against Officer Campbell for the events of January 8, 2021, he cannot invoke the Fourteenth Amendment as the basis of his remedy. See Daniels, 474 U.S. at 336 (finding that statutory and constitutional claims cannot be conflated). As a result, even if the Court believes Kingsley's objective standard should apply to all colorable suits brought by pretrial detainees, it does not apply to any claims with no Fourteenth Amendment Due Process Clause foundation, and therefore this case must be dismissed.

C. Farmer's Subjective Standard Applies to Claims of Deliberate Indifference Rather Than Kingsley, Which Is Narrowly Tailored to Excessive Force Claims.

The objective standard used in Kingsley to address an excessive force claim does not apply to deliberate indifference claims, including the allegation of a failure-to-protect. The question before the Court in Kingsley concerned only the standard that should be used in an

excessive force claim. Kingsley, 576 U.S. at 395 (explaining that the question presented "concerns the defendant's state of mind with respect to whether his use of force was 'excessive.'"). The subsequent conclusion was narrowly tailored to only the question before the Court. Id. ("We conclude with respect to *that question* that the relevant standard is objective." (emphasis added)). Thus, the only type of claim Kingsley's objective standard can apply to is one of excessive force, because questions about the standard for claims of deliberate indifference were neither raised nor at issue.

Nowhere in the Court's opinion does the Court explicitly suggest or imply with precedent that the objective standard should apply beyond the confines of the limited question before it, which was limited to resolving what the proper standard should be for an excessive force claim. Extending its reasoning to a question not in front of the Court would be improper. See R.A.V. v. City of St. Paul, 506 U.S. 377, 435 n.5 (1992). ("It is of course contrary to all traditions of our jurisprudence to consider the law on [a] point conclusively resolved by broad language in cases where the issue was not presented or even envisioned."). Lower courts have adhered to the Supreme Court's directive and declined to extend the objective standard beyond the boundaries of the circumstances discussed in the Kingsley opinion. See, e.g., Nam Dang, 871 F.3d at 1283 n.2 (declining to extend Kingsley's objective standard to a deliberate indifference claim because Kingsley did not involve a claim of deliberate indifference, therefore "it is not squarely on point with and does not . . . directly conflict with . . . prior precedent identifying the standard we apply in this opinion"); see also Strain v. Regalado, 977 F.3d 984, 991 (10th Cir. 2020) (declining to extend Kingsley to Fourteenth Amendment deliberate indifference claims in part because Kingsley focused only on whether the use of force constitutes punishment, rather than the status of the detainee).

Despite having the opportunity in Kingsley to overrule its own use of the subjective standard outlined in Farmer, the Court chose not to do so. Although the Seventh Circuit claims that the Supreme Court's logic and language in Kingsley is not limited to excessive force claims, this is expressly contrary to what is written in the opinion. Hardeman v. Curran, 933 F.3d 816, 823 (7th Cir. 2019). Only the Supreme Court can extend its holdings to new, unaddressed contexts, and in the absence of any indication from the Court that the objective standard applies to all claims, any attempt by lower courts to interpret otherwise would be improper. See Rodriguez de Quijas v. Shearson/Am. Exp., Inc., 490 U.S. 477, 484 (1989) ("[T]he Court of Appeals should . . . leav[e] to this Court the prerogative of overruling its own decisions.").

In Kingsley, the Supreme Court not only did not mention or cite Farmer, but also made no reference to deliberate indifference claims at all. The Court also did not state that the objective standard applies universally to all Due Process claims brought by pretrial detainees, indicating that it only intended to resolve the narrow question before it; that the objective standard applies to excessive force claims. Kingsley, 506 U.S. 389; compare Farmer, 511 U.S. at 837 (explicitly rejecting the use of an objective test for deliberate indifference claims, emphasizing instead that the official must know of and disregard an excessive risk posed to the inmate's safety before the official can be found liable). As this case involves only a failure-to-protect claim and no allegations of Officer Campbell engaging in excessive force, the Kingsley standard does not apply and, as a result, to prevail, Respondent is still required to prove Officer Campbell's subjective intent to place him in harm's way.

However, even if Kingsley's objective standard was not narrowly tailored to excessive force claims and was instead applied to this case, this Court would still have to dismiss the claim made by Respondent (Petitioner below). Selective lower courts such as the Ninth and Seventh

Circuits have extended the objective standard in Kingsley to deliberate indifference claims on the basis that the difference in status between pre- and post-conviction detainees is what distinguishes Farmer from Kingsley, rather than the standard applied to different constitutional violations. Hardeman, 933 F.3d at 822. By extending Kingsley to pre-trial detainee's deliberate indifference failure-to-protect claims, the Ninth Circuit maintains that the plaintiff must prove that, measured objectively, the defendant did not take reasonable measures to limit known risks to the inmate's safety and, as a result, the plaintiff suffered harm. Castro, 833 F.3d at 1071. Within the objective standard, however, the Seventh Circuit still recognizes that "negligence is not enough" when applied to deliberate indifference claims, and therefore the main question is whether the officer's actions were "objectively reasonable." Kemp v. Fulton Cnty., 27 F.4th 491, 497 (7th Cir. 2022).

The objective standard does not impose blanket liability on an officer. In Kemp, the Seventh Circuit found that the officer could not be found liable in a deliberate indifference claim for failing to protect an inmate from assault by other inmates who had previously threatened the plaintiff. Kemp, 27 F.4th at 492. Even using the objective standard, the court determined that the plaintiff did not present enough evidence to show that the defendant "was on notice of a serious risk of harm," and without this notice "a jury could not conclude that [the defendant's] actions were objectively unreasonable." Id. at 497. Here, Respondent claims that Officer Campbell was deliberately indifferent when he placed him in proximity to members of a rival gang, and that because of Officer Campbell's failure to protect him, he was attacked and suffered harm. R. at 7. Absent clear evidence that Officer Campbell knew of this risk, which Respondent has not presented, a jury cannot conclude that his actions were objectively unreasonable, and this Court should therefore grant Petitioner's motion to dismiss.

CONCLUSION

For the foregoing reasons, the Court should reverse the Fourteenth Circuit's decisions and affirm (a) the district court's denial of the Respondent's motion to proceed in forma pauperis; and (b) the district court's grant of Petitioner's motion to dismiss the Respondent's § 1983 claim against Petitioner. The Court should find that Respondent is barred from proceeding in forma pauperis because his three dismissals pursuant to Heck must be considered strikes under the PLRA. In so doing, it would uphold the purpose of the PLRA, a purpose fundamental to the effective functioning of our civil judicial system: to enable access to justice for those who cannot afford it while ensuring that there is ample judicial time, energy, and attention for meritorious claims. It should also find that the duty owed to pretrial detainees by the Due Process Clause of the Fourteenth Amendment should be measured using the subjective definition of deliberate indifference, not the objective definition. Both the PLRA and the Fourteenth Amendment provide crucial value to those within our prison system, and the requested outcome would preserve this value while ensuring that it is not abused or misapplied at the expense of others.